IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.07.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

WRIT PETITION No.11149 of 2007
and M.P.No.2 of 2007

S. Krithivasan ... Petitioner

-vs-

The Chennai Metropolitan
Development Authority,
rep.by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8 ..Respondent

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

For petitioner :: Mr. R. Mohan

For respondents :: Mr. J.Ravindran (CMDA)

ORDER

(MADE BY P.JYOTHIMANI,J.)

This writ petition is for direction, calling for the records of the respondent in letter No.Reg./C6/20945/99 dated 14.03.2007 with regard to the rejection of regularisation application for the building put up at No.24, Sardar Patel Road, Adyar, Chennai 20 submitted by the petitioner by quashing the same and consequently direct the respondent to accord approval on the application submitted by the petitioner for regularisation with regard to the constructions put up at the address mentioned above.

2. The First Bench of this Court in Consumer Action Group vs. The State of Tamil Nadu (2006 (4) CTC 483), while dealing with the constitutional validity of Section 113-A of the Tamil Nadu Town and Country Planning Act, 1971, which speaks about the exemption in respect of development of certain lands and buildings, has held that the said provision and the consequential amendments to the Application, Assessment and Collection of Regularisation Fee (Chennai Metropolitan Area) Rules, 1999, as ultra vires in so far as it is applicable to the constructions made after 28.02.1999.

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3. The Bench has also quashed all orders of regularisation of buildings constructed after 28.02.1999, passed pursuant to the impugned amending provisions. The Bench has further constituted a Monitoring Committee, conferring various powers with guidelines to the said Committee for avoiding future violations and also to certify that the constructions have been completed as per the Planning Permits, etc. One of such directions is contained in para 32 (x) of the judgement referred to above, which reads as under.

> "32(x). The Chief Planner is directed to decide the applications for exemption pertaining to constructions prior to the cut-off date, i.e. 28.2.1999 and dispose of all the Applications within a period of three months. It is needless to say that all the Applications claiming exemption under the amended provisions of Section 113-A of the Act in respect of constructions made after 28.2.1999 shall stand dismissed and those Applications shall not be entertained by the Government and/or the authority or officer authorised by the Government under Section 113-A of the Act. The Chief Secretary is directed to allot the hearing of Appeals atleast to two officers in addition to the Housing and Urban Development Secretary. "

4. In addition to that, para 32(xii) states that the Monitoring Committee shall be consulted in the following terms.

> "32(xii). The Monitoring Committee shall be consulted for applications claiming exemption under Section 113-A of the Acts as well as Appeals under Section 113-A(6). The Monitoring Committee shall also be consulted for changes in the Master Plan and Development Control Rules, which affect construction activity in the city. "

5. The petitioner, who is the owner property situated at Door No.24, Sardar Patel Road, Adyar, Chennai 600 020, has applied for planning permission for construction of residential/commercial building and the same was approved by the respondent on 11.06.1992 and he has also put up construction in the year 1992. While putting up construction, there was some additional rooms in the terrace and also rooms in the basement floor, for which he has applied for regularisation on 29.05.1999 in Registration No.4730. He also submitted another application for regularisation on 31.10.2000 in Registration No.11391 and also paid the scrutiny fee and advance regularisation fee amounting to Rs.11,850/-. The respondent has rejected both the said applications on 14.03.2007, based on the decision of the Monitoring Committee dated 07.03.2007. Hence the present writ petition.

6. The respondent filed a counter affidavit, wherein it is admitted that the petitioner has made the above said two applications on 29.05.1999 and 31.10.2000 for regularisation. It is also stated that demand notice was sent to the petitioner on 29.08.2002, demanding regularisation fees, development charges and other fees, but the same were not paid. After the decision of this Court dated 23.08.2006 cited supra, public notice was issued in leading newspapers, calling the applicant to furnish documentary evidence to establish that construction

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was put up before 28.02.1999, but the petitioner failed to produce any evidence that construction was put up before 28.02.1999 and therefore, the said applications were rejected by the Monitoring Committee on 07.03.2007. The petitioner is not prevented from approaching the Monitoring Committee.

7. In view of the above said facts and after hearing the learned counsel for the petitioner as well as the respondent, and taking note of the Division Bench decision referred to above, the writ petition is disposed of with the following directions:

> "(i) The petitioner shall resubmit the applications for regularisation along with all materials to prove that the construction was put up prior to 28.02.1999 within a period of two weeks from the date of receipt of copy of this order;
>
> (ii) The Chief Planner of the CMDA shall decide the said application for exemption as well as the representation of the petitioner dated 29.05.1999 and 31.10.2000, after giving opportunity to the petitioner and in consultation with the Monitoring Committee and pass appropriate orders within a period of six weeks thereafter; and
> (iii) The CMDA shall not demand any further fees.

The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
The Member Secretary,
The Chennai Metropolitan
Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.

+ 1 CC To Mr. R.Mohan, Advocate SR NO.45945

+ 1 CC To Mr. J.Ravindran, Advocate SR NO.46795

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